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ABSTRACT

The regulation to implement Title IX became effective July 21, 1975. It establishes criteria to which education institutions or agencies receiving federal funds must adhere in eliminating sex discrimination from their education programs and their employment policies and practices. This handbook describes the five general requirements that must be implemented by July 21, 1976: notification of policy; designation of responsible employee; grievance procedures; institutional self-evaluation; and assurance of compliance. Appendices provide a sample program plan for compliance and checklists of procedural steps for ensuring compliance. (JMF)

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COMPLYING WITH TITLE IX

THE FIRST TWELVE MONTHS

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U.S. Department of Health, Education, and Welfare
Office of Education

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COMPLYING WITH TITLE IX: THE FIRST TWELVE MONTHS

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COMPLYING WITH TITLE IX: THE FIRST TWELVE MONTHS

Title IX of the Education Amendments of 1972 states that:

> *No person. . .shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*

The Regulation to implement Title IX became effective July 21, 1975; it establishes the criteria to which education institutions or agencies receiving Federal funds must adhere in eliminating sex discrimination from their education programs and their employment policies and practices. The provisions of the Regulation may be organized into four major subject categories:

- general requirements for achieving compliance;
- nondiscrimination in student admissions and recruitment;
- nondiscrimination in student programs;
- nondiscrimination in employment in education programs and activities.

The provisions outlining general requirements for achieving compliance are a unique aspect of the Title IX Regulation. They specify five tasks which must be completed by institutions of higher education and State and local education agencies receiving Federal funds within the first twelve months after the effective date of the Regulation.

Title IX is the first comprehensive Federal nondiscrimination law covering sex discrimination in the programs of education institutions and agencies. Its requirements provide new criteria against which administrators, teachers, parents and students must examine the programs, policies and structures of their institutions, and correct those which may be discriminatory on the basis of sex.

This handbook describes the five basic general requirements which must be implemented by July 21, 1976. (A complementary handbook, *Complying With Title IX: Implementing Institutional Self-Evaluation,* provides additional assistance for ensuring compliance with the fourth general requirement.) It is organized in five sections, each devoted to one of the five general compliance requirements.

Each section includes an italicized citation of the relevant portion of the Title IX Regulation, a discussion of requirements for its implementation, and appropriate implementation aids. The two appendices provide a sample program plan and a checklist of procedural steps for ensuring compliance with each of the five requirements.

Notification of Policy

THE REGULATION

§ *86.9 Dissemination of policy.*

(a) Notification of policy.

(1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by Title IX. . .not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as. . .necessary to apprise such persons of the protections against discrimination assured them by Title IX. . .and that inquiries concerning the application of Title IX. . .to such recipient may be referred to the employee designated. . .or to the Director [of the Office for Civil Rights, HEW].

(2) Each recipient shall make the initial notification required. . .within 90 days of the effective date [of the Regulation]. . .*which notification shall include publication in: (i) local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communication distributed to every student and employee of such recipient.*

(b) Publications.

(1) Each recipient shall prominently include a statement of the policy. . .in each announcement, bulletin, catalog, or application from which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this. . . [Regulation].

(c) Distribution.

Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

IMPLEMENTING THE REQUIREMENT

Each education institution or agency must make notification to students, to parents of elementary and secondary school students, to employees, to applicants for admission and employment, to sources of referral of applicants for admission and employment, and to all unions or professional organizations holding collective bargaining or professional agreements with the institution or agency that it is the policy of that institution or agency not to discriminate on the basis of sex. Policy notification statements must refer to the institution's or agency's commitment to nondiscrimination on the basis of sex in employment and education programs, indicate the recipient's obligation for compliance with Title IX, and provide a reference for inquiries related to such policy. This requirement, which was to have been initially fulfilled by October 19, 1975, called for publication of the policy in local newspapers; in publications produced by the institution or agency or its students; and in memoranda or other written communications to each student and employee.

Although initial notification was to have been made by October 19, 1975, the responsibility for policy notification is ongoing. Policy statements are to be included in announcements, bulletins, application forms, student handbooks, materials used for recruitment of students or employees, and other documents made available to the groups receiving initial notification of the policy Care must also be taken to ensure that such documents do not suggest, by text or illustrations, differential treatment on the basis of sex except where such treatment is permitted by the Regulation (e.g., sex separation in athletic teams, housing facilities, locker rooms, etc.). Distribution of these publications must be made without discrimination on the basis of sex.

All admission and recruitment representatives of the institution or agency must be informed of the policy and it is the responsibility of the institution or agency to ensure that such representatives are adhering to the policy in implementing their assigned responsibilities.

A review of the initial policy notification statement and its dissemination should be made at this time to ensure that notification was made to all groups specified in the Regulation and that such notification provided the name of the person designated responsibility for compliance with Title IX. If this was not accomplished by October 19, 1975, policy notification should be completed now. Publication of the name, office address and telephone number of designated employee(s)* and distribution of grievance procedures** for resolution of employee and student grievances should be undertaken now if this has not already been accomplished.

IMPLEMENTATION AIDS

Sample Policy Notification Statement

> It is the policy of (name of recipient) not to discriminate on the basis of sex in its educational programs, activities or employment policies as required by Title IX of the 1972 Education Amendments.[1] Inquiries regarding compliance with Title IX may be directed to (name, office address and telephone number of the Title IX coordinator) or to the Director of the Office for Civil Rights, Department of Health, Education, and Welfare, Washington, D.C.

[1]This policy statement should make reference to nondiscrimination in admissions where the admissions policies and practices of an institution are subject to Title IX coverage.

* See page 7. ** See page 11.

Checklist to Ensure Compliance With Policy Notification Requirement

• Have you developed the nondiscrimination policy statement as required under Title IX and distributed it for publication in:

local newspapers?	Yes ☐ No ☐
institutional or agency newspapers or publications?	Yes ☐ No ☐
student publications?	Yes ☐ No ☐
memoranda or other written notices to students?	Yes ☐ No ☐
memoranda or other written notices to parents (elementary and secondary)?	Yes ☐ No ☐
notices to labor organizations or groups holding professional agreements with the institution or agency?	Yes ☐ No ☐
notices to student and employee recruitment representatives?	Yes ☐ No ☐

• Have procedures been developed to ensure continuing publication of the policy in:

course announcements?	Yes ☐ No ☐
bulletins or catalogs?	Yes ☐ No ☐
application forms?	Yes ☐ No ☐
student recruitment materials?	Yes ☐ No ☐
employee recruitment materials?	Yes ☐ No ☐
student handbooks?	Yes ☐ No ☐
official policy statements?	Yes ☐ No ☐

• Has a policy directive been issued and procedures specified to ensure that all institutional or agency publications avoid textual or illustrative references to differential treatment on the basis of sex except as such treatment is permitted by the Regulation?

Yes ☐ No ☐

• Has a policy directive been issued and procedures specified to ensure that institutional or agency representatives have been informed of the policy of nondiscrimination on the basis of sex and are implementing it in carrying out their assigned responsibilities?

Yes ☐ No ☐

Designation of Responsible Employee

THE REGULATION

§ *86.8 Designation of responsible employee. . .*

(a) Designation of responsible employee.

Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this. . . [Regulation], *including any investigation of any complaint communicated to such recipient alleging its noncompliance with. . .* [the Regulation] *or alleging any actions which would be prohibited by. . .* [the Regulation]. *The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.*

IMPLEMENTING THE REQUIREMENT

The second general requirement of the Title IX Regulation, the designation of a responsible employee, ensures the assignment of responsibility and accountability for the coordination and monitoring of compliance activities. Although designation of a responsible person does not diminish the ultimate legal responsibility of the institution's or agency's chief administrative officer, it does emphasize the need for clear assignment of staff responsibi'ity for compliance and for the allocation of sufficient time to carry out this responsibility.

The Regulation requires the designation of at least one person with responsibilities for coordinating and monitoring compliance, including the handling of student and employee complaints of sex discrimination. The per or persons assigned these responsibilities for Title IX compliance should possess administrative skills; knowledge of personnel management; knowledge of student curriculum and policies; and the ability to work with students, employees and community groups. It is important that such employee(s) have the endorsement and support of the chief administrative officer and opportunity for regular access and reporting.

The scope of Title IX coverage suggests the need for designation of at least two persons with complementary expertise. Two major areas of activity are involved—activities relating to ensuring nondiscrimination in the admission and treatment of students and activities relating to ensuring nondiscrimination in employment policies and practices. Responsibility for the implementation of the provisions regarding student admissions and programs should rest with a person possessing

knowledge and experience in student admissions, administrative policies and practices relating to general treatment of students, and the scope of the curriculum provided for students. Job responsibilities of this person would include the coordination and monitoring of the evaluation of possible discrimination and necessary modifications in admissions, curriculum and course offerings, and student policies and services; the provision of technical assistance to staff in achieving compliance; and the development and implementation of the grievance procedure for resolution of student complaints of sex discrimination. The person assigned these job functions might be designated as Title IX Coordinator for Student Admissions and Programs.

A second person, one with knowledge and experience in personnel management, might be designated as the person responsible for the evaluation of possible discrimination and necessary modifications of employment policies and practices, including those relating to recruitment, hiring, promotion, fringe benefits and training, and for the implementation of a grievance procedure for employee complaints of discrimination. A title for the person assigned these job functions might be Title IX Coordinator for Employment.

The number of employees designated should depend on the numbers of students and employees served, the number of identified problems of sex discrimination, the organizational structure of the institution or agency, and other situational factors. If more than one person is designated, it is essential that provisions are made for clear delineation of authority, responsibilities and inter-staff relationships.

IMPLEMENTATION AIDS

Administrative Implementation Steps

Designation of a responsible employee(s) might be effectively accomplished through the following steps:

- Review the Title IX Regulation which establishes the criteria for achieving compliance and provides the parameters for determining the job functions of the designated employee(s).
- Prepare a description of the functions and responsibilities to be performed by the Title IX coordinator(s) in the areas of employment and student admissions and program.
- Consider qualifications (knowledge, experience, and competencies) of staff to be considered for designation.
- Conduct necessary conferences, interviews, or other procedures necessary for the selection of the designated employee(s).
- Make a formal designation of the employee(s) selected.
- Develop a memo for all staff and students which provides notification of the appointment and the name, office address, and telephone number of designee(s).
- Develop a statement regarding the compliance responsibilities of all staff and their relationship to the designated employee(s).
- Design a program plan of the tasks necessary for achieving compliance with Title IX and a timeline for achieving such compliance.
- Establish a schedule for regular reporting and conferences between designated employee(s) and chief administrative officers.
- Evaluate progress of compliance efforts regularly and implement procedures for problem solving as they are identified.

Sample Lists of Job Responsibilities

Responsibilities of Title IX Coordinator for Student Admissions and Programs

- Notification of students, parents of elementary and secondary students, and sources of referral for student admission of the institutional/agency nondiscrimination policy and Title IX requirements related to student admissions and programs.
- Notification of all contractors or entities providing benefits or services to students (e.g., medical insurance plans, cooperative employment programs, etc.) of the institutional/agency nondiscrimination policy and the requirements of Title IX.
- Development of a grievance procedure for the prompt and equitable resolution of complaints related to student admissions and programs.
- Coordination of the institutional self-evaluation with respect to student admissions and programs, necessary policy modifications, and specifications of remedial steps for elimination of the effect of past discrimination.
- Provision of assistance to staff in the implementation and monitoring of corrective and remedial actions to achieve compliance with Title IX requirements for student admissions and programs.
- Administration of complaints and grievances regarding sex discrimination in regard to student admissions and programs.
- Preparation of regular reports for administration, governance, students, community groups, and other interested groups concerning identified discriminatory practices, violations of nondiscrimination policies, grievances filed regarding student admissions and programs and the implementation of corrective measures.
- Maintenance of records for the evaluation and reporting of compliance efforts.
- Maintenance of relationships with student groups, faculty and staff, community groups, and interested individuals for the interpretation and dissemination of nondiscrimination policies and procedures in student admissions and programs.

Responsibilities of Title IX Coordinator for Employment

- Notification of all employees of the institutional/agency policy of nondiscrimination and the Title IX requirements related to employment policies and practices.
- Notification of all contractors or entities providing benefits or services to employees (e.g., medical insurance or other staff benefits) of the nondiscrimination policy and the requirements of Title IX.
- Notification of labor or professional organizations holding contracts with the institution or agency of the nondiscrimination policy and Title IX requirements.
- Notification of sources of referral for employment of the nondiscrimination policy and Title IX requirements.
- Development of a grievance procedure for prompt and equitable resolution of discrimination complaints related to employment.
- Coordination of institutional self-evaluation with respect to employment policies and practices and the identification of instances of discrimination, the modification of such instances and the specification of remedial steps for eliminating the effects of past discrimination.

- Provision of assistance to staff in the implementation and monitoring of corrective and remedial actions to achieve compliance with Title IX requirements for employment.
- Resolution of complaints and grievances regarding sex discrimination in employment practices or policies.
- Preparation of regular reports for administration, governance, labor and professional organizations and interested community groups concerning identified discriminatory practices, violations of nondiscrimination policies, grievances filed regarding employment policies and practices and their resolution, and the implementation of corrective measures.
- Maintenance of records for the evaluation and reporting of compliance efforts.
- Maintenance of relationships with sources of referral and recruitment of employees, labor and professional organizations, and other relevant groups for the interpretation and dissemination of nondiscrimination employment policies and practices.

3 Grievance Procedures

THE REGULATION

§86.6. . .*Adoption of grievance procedures.*

(b) Complaint procedure of recipient.

A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this. . .[Regulation].

IMPLEMENTING THE REQUIREMENT

Meaningful prohibition of discrimination requires the development of procedures for remediation of such discrimination and enforcement of the law. Title IX follows the pattern of other Federal nondiscrimination laws covering education institutions or agencies in that complaints may be filed with the Office for Civil Rights, Department of Health, Education, and Welfare. The Title IX Regulation is unique, however, in that it also requires the development of procedures for the local handling of complaints.

The Regulation requires institutions or agencies to develop a local grievance procedure(s) for prompt and equitable resolution of both student and employee complaints of sex discrimination. The organization and structure of such procedures are not specified within the Regulation but are left to the discretion of the institution or agency. (Exhaustion of these procedures is *not* a prerequisite for the filing of complaints with the Office for Civil Rights.) Criteria which influence decisions regarding the grievance procedures should be explicated by the agency. A primary criterion in both student and faculty grievance procedures is the assurance of due process to all parties concerned. Other criteria might include promptness of handling, ease of accessibility and simplicity of procedures for use.

Where student grievance procedures already exist within student rights and responsibilities programs, these procedures may be extended to the handling of sex discrimination complaints. If they do not exist, mechanisms for the resolution of such grievances must be developed. Frequently, grievance procedures for the handling of employee complaints already exist, either as a condition of collective bargaining or professional agreements or as a general personnel policy. Where such a procedure exists, it is expedient to include the handling of sex discrimination complaints under this mechanism, thus avoiding the need for the development of a new procedure.

The ultimate decision as to the organization of grievance procedures is the prerogative of the education institution or agency. A single procedure may be provided for students and employees; coverage of sex discrimination may be integrated into existing procedures; or new mechanisms may be developed in other ways which are compatible with the institution's or agency's needs and responsibilities. Within local education agencies, grievances may be considered at the individual school level or a centralized mechanism may be developed for handling all sex discrimination complaints within the district. Some districts may wish to develop a two-step grievance procedure which calls for first-level handling of the grievance at the individual school level with a second-level handling of appeals at the central district level. Similar two-step procedures could be developed in institutions of higher education; employee complaints could be handled first at the school or department level, and appeals could be handled at the central administrative level. Student grievances might be handled at the first level by the student affairs office and then appealed to a second administrative level. These organizational decisions are to be made by the individual institution or agency.

It is critical that administrative mechanisms be developed for the correction and remediation of any instances of discrimination or the effects of discrimination which may be identified as a result of the grievance process. Individuals with responsibility for the investigation of grievances must have sufficient access to authority to ensure the correction of identified noncompliance.

Grievance procedures not only provide a mechanism for the resolution and/or remediation of specific allegations or instances of discrimination on a case-by-case basis; they also provide a means of identifying sources of systemic discrimination that might otherwise exist unnoticed by administrators. A record of all complaints and their resolutions provides a data base from which local education agencies or institutions of higher education may move to correct noncompliance with Title IX.

Regardless of their organization, grievance procedures for students and employees must be published and distributed to each respectively. Efforts should be made to ensure ongoing publication and notification of grievance procedures.

IMPLEMENTATION AID

Criteria for the Evaluation of Due Process

- Are procedures for the filing of complaints made known to students, employees or other interested groups who may wish to file such complaints?
- Are such complaint procedures readily usable?
- Do grievance procedures require written filing of charges?
- Do grievance procedures require notification of persons against whom allegations of discrimination are made?
- Are all parties involved in allegations of discrimination notified of dates and procedures for hearings of such allegations?
- Do procedures provide for orderly presentation of evidence related to all points of view involved in the allegations of discrimination?
- Are hearings conducted by a neutral third party not directly affected by the outcome of a hearing?
- Are hearings carried out within a reasonable period of time after the allegation of discrimination?
- Do grievance procedures require written notification of all interested parties of the grievance resolution?
- Are appeal procedures available for persons not satisfied with the disposition of complaints?
- Are mechanisms specified to ensure the correction and/or remediation of discrimination identified through grievance procedures?

4

Institutional Self-Evaluation

THE REGULATION

§ *86.3. . .Self-evaluation.*

(c) Self-evaluation.

Each recipient education institution shall, within one year of the effective date of this. . . [Regulation]:

(i) evaluate, in terms of the requirements of this. . . [Regulation], *its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;*

(ii) modify any of these policies and practices which do not or will not meet the requirements of this. . . [Regulation]; *and*

(iii) take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials.

Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modification made pursuant to subparagraph (c)(ii) and of any remedial steps taken pursuant to subparagraph (c)(iii).

IMPLEMENTING THE REQUIREMENT

The Title IX Regulation recognizes the possibility that sex discrimination or the differential treatment of females and males may be covert and unconscious. The inclusion of the requirement for self-evaluation and maintenance of documentation of program modifications or remedial steps provides a method for systematic assessment and action to ensure compliance with the law.

The required process of self-evaluation is comprised of three major components:

- evaluation and appraisal of current policies and practices and the effects therefrom to determine discrimination or possible effects of discrimination on the basis of sex;
- modification of any policies or practices which are found to be discriminatory and in non-compliance with the Regulation;
- development of remedial steps to eliminate the effects of any discrimination which may have resulted from such policies or practices.

The first two components of self-evaluation (appraisal and modification of discriminatory policies and practices) must be completed within the first twelve months of compliance activities. The remedial steps required in the third component of the self-evaluation process must be delineated and timelines specified during this same period, but implementation will continue beyond this deadline and a description of modifications or remedial steps undertaken as a result of the self-evaluation must be maintained on file for a period of three years. The specification of remedial steps is one means of institutional/agency planning for orderly and progressive elimination of the effects of any discrimination which result or may have resulted from discriminatory policies or practices.

Determination of the method by which institutional self-evaluation will be implemented is left to the discretion of the institution or agency. Effective implementation will necessitate the development of procedures which involve a variety of administrative, supervisory and instructional staff. In some instances, it may be advisable to include students and community groups in the development of selected portions of the self-evaluation.

(**Note**: Local education agencies seeking further information and assistance regarding this fourth requirement are referred to the companion handbook, *Complying With Title IX: Implementing Institutional Self-Evaluation.*)

Institutional Self-Evaluation
Summary Report Form

Compliance area: (taken from Regulation)

Staff member responsible for area coordination: (name, position, office address and telephone)

Policy statement issued: (date)

Policy directive issued: (date)

Data/assurances required

forms, procedures, and timelines issued: (date)

data/assurances received:
from central office staff member – (date)
from building administrators
(specify schools) – (date)

Noncompliance identified:

(list policies, practices or materials found to be in noncompliance)

Modifications taken:

(list any actions taken to correct noncompliance) (date completed)

Remedial steps taken or planned:

(list any actions taken to eliminate the effects of identified noncompliance) (date completed or of planned completion)

Comments:

Institutional Self-Evaluation–
Summary Report Form

Completed Sample

Compliance area: Counseling

Staff member responsible for area coordination:
M. Ortega, Director of Counseling and Guidance
Administration Building, Room 401, 833-5426

Policy statement issued: December 1, 1975
Policy directive issued: February 1, 1976

Data/assurances required
forms, procedures and timelines issued: February 1, 1976
data/assurances received: (deadline—May 1, 1976)
from central office staff March 20, 1976
from building administrators–
Reed Junior High School April 1, 1976
Jefferson Junior High School April 10, 1976
Stratford Junior High School May 1, 1976
Central High School March 31, 1976
West High School May 1, 1976

Noncompliance identified:

Hedges Vocational Interest Blank currently in use has separate male and female scoring forms, each listing different occupations.

Choosing A Career, used for senior high school counseling, has only 4 females shown in illustrations while males are shown in 39. Females are shown only as nurses, teachers, and librarians; text refers to choosing a career which is compatible with responsibilities of motherhood.

Three of four counselors in Reed Junior High School routinely advise all female students to take one semester of personal typing before graduation. No such advice is given to male students.

Vocational education courses in every junior and senior high school have been found to have sexually disproportionate enrollments. Course descriptions in student course catalogs have been found to use stereotyped, sex-linked pronouns in referring to these courses (e.g., "he" when referring to auto mechanics students; "she" when referring to secretarial students).

Modifications taken:

As of March 1, 1976, the Hedges Vocational Interest Blank was replaced by the Martin Career Maturity Inventory.

Choosing A Career will be supplemented by **Career Decisions: Planning for Women**, until such time as a sound non-sexist career guidance volume can be identified.

A directive regarding legal responsibility for nondiscriminatory counseling has been disseminated to all counselors.

All student course catalogs are in the process of revision; all course descriptions will contain only gender-neutral labels at next publication, now scheduled for March, 1977.

Remedial steps taken or planned:

The following materials have been obtained for use by counselors:

Sex Fairness In Career Guidance: A Learning Kit (from Abt Associates Inc.)
Issues of Sex Bias and Sex Fairness in Career Interest Measurement (from the National Institute of Education)

An agency-wide, 2-day program, "Career Planning for Women," will be held on October 12, 1976.

Comments: Request for inservice training in non-sexist career counseling for all counselors is currently under consideration. Such training might be incorporated in inservice days scheduled for October 4-5, 1976.

TITLE IX COMPLIANCE–SUMMARY REPORT FORM **

Compliance Areas	Date of Policy Issuance	Self-Evaluation–Date Completed	Modifications Taken (Specify)	Remedial Steps (Specify)	Coordination/Implementation Responsibility (Specify Staff Name)	Comments
General Requirements						
• notification of policy						
• designation of responsible employee(s)						
• development of grievance procedures						
• institutional self-evaluation						
• submission of assurances						
Admissions						
• schools of vocational education						
Student Program						
• access to courses						
–general –physical education –vocational education						
• counseling						
• treatment of students						
• student marital and parental status						
• financial assistance						
• athletics						
Employment						
• recruitment						
• hiring and promotion						
• compensation						
• job assignment/classification						
• collective bargaining agreements						
• leaves of absence						
• benefits and training						

** *This form is an implementation aid provided for use or adaptation; it is not the official reporting form to be issued by the Office for Civil Rights, HEW.*

5 Assurance of Compliance

THE REGULATION

§86.4 *Assurance required.*

(a) General. Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director [of the Office for Civil Rights, HEW], *that each education program or activity operated by the applicant or recipient and to which this. . .* [Regulation] *applies will be operated in compliance with this. . .* [Regulation]. *An assurance of compliance with this. . .* [Regulation] *shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with. . .* [remedial actions prescribed by the Office for Civil Rights after a finding of discrimination] *to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.*

(c) Form. The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees or successors in interest.

IMPLEMENTING THE REQUIREMENT

The Title IX Regulation requires the submission of an assurance form developed by the Director of the Office for Civil Rights with all applications for Federal financial assistance. The assurance form has not been released at the time of publication; information may be obtained from the Office for Civil Rights, HEW.

APPENDIX A

Sample Program Plan for Title IX Compliance

To achieve compliance with Title IX, institutions and agencies must develop a systematic plan for compliance activities and assign responsibility and authority for their completion to appropriate persons.

The following sample program plan provides a general outline which may be useful in delineating objectives and work activities to achieve compliance. Specific plans must be elaborated and adopted to meet specific situational needs.

In order to implement such a program plan, several administrative decisions must be made:

- What authority/responsibility should be delegated and to which staff?
- What specific procedures will be established for accomplishment of activities?
- What timelines must be developed to ensure attainment of objectives?

The delegation of authority/responsibility may be the decision most crucial to effective implementation of the plan. The objectives which follow are written for the chief administrative level of an institution or agency. Although many of the work activities may be delegated to the designated employee or Title IX coordinator, it is critical that responsibility for monitoring and involvement be retained by the chief administrative officer.

Goal—To develop a program for the attainment of compliance with Title IX by July 21, 1976

Objective 1.0

To notify students, employees, parents of elementary and secondary students, applicants for admission, applicants for employment, admission and recruitment representatives, and groups holding collective bargaining or professional agreements with the institution/agency of the policy of nondiscrimination on the basis of sex.

Work Activities—Objective 1.0

1.1 Review any existing institutional/agency nondiscrimination policies and prepare statement of policy according to Title IX requirements.

1.2 Submit statement of policy to chief administrator and institutional governance (school board, board of trustees, policy-making groups) for review and action where appropriate.

1.3 Prepare materials for publication of policy notification in local newspapers and newspapers or magazines operated by institution or agency or its students or alumnae; submit for publication.

1.4 Prepare and disseminate memoranda or other written communication of policy to students, employees and parents of elementary and secondary students, applicants for admission or employment, institutional representatives and unions or professional organizations holding collective bargaining or professional agreements.

1.5 Prepare policy directive and assign responsibility for ensuring continuing inclusion of policy statement in course announcements, bulletins, catalogs, application forms, and recruitment materials.

1.6 Specify publication review procedures and staff responsibilities for ensuring that institutional/agency publications do not suggest, by text or illustration, differential treatment of students or employees except where permitted by the Title IX Regulation.

1.7 Develop reporting form and timelines for documenting modifications of publications.

Objective 2.0

To designate an employee(s) as the person(s) responsible for coordinating and monitoring activities necessary for achieving compliance with Title IX.

Work Activities–Objective 2.0

2.1 Prepare a listing of job responsibilities of the Title IX coordinator(s).

2.2 Develop a list of necessary qualifications for the position.

2.3 Review qualifications of persons available for Title IX coordination responsibilities.

2.4 Select person(s) for Title IX coordinator(s).

2.5 Make a formal designation of employee(s) selected; specify job responsibilities and authority, delineate relationships with staff, and assign accountability.

2.6 Prepare and disseminate policy directive for employees providing name, office address and telephone number of designated employee(s).

2.7 Establish a schedule for regular reporting of activities and progress to chief administrative officer by designated person(s).

Objective 3.0

To develop and publish student and employee grievance procedures for the handling of complaints alleging violations of Title IX.

Work Activities–Objective 3.0

3.1 Review existing student grievance procedures, if any.

3.2 Review existing employee grievance procedures, if any.

3.3 Establish criteria for the development of grievance procedures.

3.4 Prepare grievance procedures.

3.5 Publish grievance procedures and disseminate to students and employees.

3.6 Develop policy directive for administrators and staff specifying procedures and the responsibilities of staff for handling grievances.

3.7 Develop grievance reporting system which permits classification, documentation and reporting of grievances and their resolutions.

3.8 Implement student grievance procedure.

3.9 Implement employee grievance procedure.

3.10 Maintain grievance reporting system.

3.11 Analyze grievance reports to determine possible areas of noncompliance and necessary modifications or remedial steps.

3.12 Prepare regular reports of use of grievance procedures for chief administrator and other relevant persons.

3.13 Develop mechanisms/procedures for ensuring that modifications or remedial steps are taken with respect to any instances of noncompliance with Title IX as identified through the grievance process.

Objective 4.0

To develop and implement an institutional self-evaluation procedure to determine institutional or agency compliance with Title IX.

Work Activities–Objective 4.0

4.1 Review Title IX Regulation and specify relevant areas for self-evaluation.

4.2 Develop a self-evaluation plan which includes delineation of required activities and procedures, assignment of staff responsibilities, and specification of format and timelines for the submission of evaluation reports and final assessment of data collected.

4.3 Prepare a policy directive for staff outlining the scope, procedures, responsibilities and timelines for implementation and documentation of the self-evaluation and related modifications.

4.4 Collect data submitted and review for compliance with Title IX Regulation.

4.5 Provide units (schools, departments or colleges) with technical assistance in those instances where there may be question as to evaluation of information, completion of modifications, or the need for remedial steps.

4.6 Analyze and compile reports of self-evaluation that have been submitted.

4.7 Prepare total self-evaluation and documentation of modifications and remedial steps.

4.8 Monitor and provide assistance for development and implementation of modifications and remedial steps.

4.9 Prepare regular reports on progress of the self-evaluation and institutional or agency compliance for chief administrator and other relevant persons.

4.10 Maintain on file for a three-year period a record of all modifications and remedial steps undertaken to achieve compliance.

Objective 5.0

To maintain documentation of activities related to achieving compliance with Title IX which may be helpful for the preparation of assurances of compliance to be submitted with all applications for Federal funds.

Work Activities–Objective 5.0

5.1 Maintain files on activities related to the modification of policies or practices found to be in noncompliance, the development of remedial steps, and the use of grievance procedures.

5.2 Update files on a regular basis.

5.3 Regularly analyze files to assess ongoing compliance.

5.4 Supply reports as necessary for submission of assurance statements which accompany applications for Federal funds.

APPENDIX B

Checklist of Procedural Steps for Ensuring Compliance with Title IX

Evaluate compliance with the five general provisions by answering the following questions:

Policy Notification

- Has a policy notification been developed containing:
  - a statement of institutional/agency responsibility for compliance with Title IX requirements for nondiscrimination in education programs and employment? Yes ☐ No ☐
  - a statement that any inquiries regarding Title IX and its application may be referred to the employee designated with responsibility for coordinating compliance or to the Director of the Office for Civil Rights, HEW? Yes ☐ No ☐
- Have general guidelines been disseminated to inform staff of the implications of the nondiscrimination policy and its relationship to their job responsibilities? Yes ☐ No ☐
- Has an initial notification of policy been made to:
  - students? Yes ☐ No ☐
  - parents of elementary and secondary students? Yes ☐ No ☐
  - applicants for admission? Yes ☐ No ☐
  - admissions recruitment representatives? Yes ☐ No ☐
  - employees? Yes ☐ No ☐
  - applicants for employment? Yes ☐ No ☐
  - sources of referral for employment? Yes ☐ No ☐
  - employment recruitment representatives? Yes ☐ No ☐
  - unions or professional organizations holding collective bargaining or professional agreements with the institution or agency? Yes ☐ No ☐
- Has notification of the policy been published in:
  - local newspapers? Yes ☐ No ☐
  - newspapers or magazines produced by the institution or agency, by students or by alumni groups? Yes ☐ No ☐
  - memoranda or other written communication distributed to every student and employee? Yes ☐ No ☐
- Has a procedure been developed to ensure ongoing publication of the policy of nondiscrimination on the basis of sex in:
  - course announcements? Yes ☐ No ☐
  - bulletins? Yes ☐ No ☐
  - catalogs? Yes ☐ No ☐
  - application forms? Yes ☐ No ☐
  - student recruiting materials? Yes ☐ No ☐
  - employee recruiting materials? Yes ☐ No ☐

- Has a responsibility for publications review been assigned to ensure that institutional or agency publications do not suggest, by text or illustration, differential treatment of applicants, students or employees on the basis of sex except when permitted by the Regulation? Yes ☐ No ☐

Designation of Responsible Employee

- Has an employee(s) been designated as the person(s) responsible for coordinating and monitoring activities necessary for compliance with Title IX? Yes ☐ No ☐
- Have employees and students been notified of the designation of the responsible person(s) and her/his office address(es) and telephone number(s)? Yes ☐ No ☐
- Has a policy directive been developed outlining the job responsibilities of the designated person(s) and the procedures for involvement and coordination of her/his job activities with other staff activities and district programs? Yes ☐ No ☐

Grievance Procedures

- Have grievance procedures been developed or adapted for the handling of student complaints alleging violations of Title IX? Yes ☐ No ☐
- Have grievance procedures been developed or adapted for the handling of employee complaints alleging violations of Title IX? Yes ☐ No ☐
- Have administrators, employees and students been fully apprised of the procedures to be utilized in the handling of grievances related to possible Title IX violations in education programs, the treatment of students or the policies and practices covering employment? Yes ☐ No ☐

Institutional Self-Evaluation

- Has a policy directive outlining the scope and procedures to be followed for institutional self-evaluation and specifying the responsibilities of staff for data collection and review been developed and disseminated to staff? Yes ☐ No ☐
- Have forms, procedures and timelines been developed to ensure involvement of all institutional or agency units (schools, departments, colleges) in the self-evaluation process? Yes ☐ No ☐
- Has a procedure been developed for the review of all self-evaluation data to ensure that all necessary modifications and the development of systematic plans for implementing necessary remedial steps are accomplished? Yes ☐ No ☐
- Has a directive been issued requiring the maintenance of descriptions of all modifications and remedial steps on file for a three-year period? Yes ☐ No ☐

Assurances

- Have the institution's or agency's efforts toward achieving compliance with Title IX been sufficiently well-documented to provide information necessary for assurance statements which must accompany all applications for Federal assistance? Yes ☐ No ☐

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ABSTRACT

An understanding of federal and state laws prohibiting discrimination and their implications for education policies and practices is necessary for policy makers, administrators, and education personnel serving elementary, secondary, and postsecondary institutions. The summary of federal laws and regulations prohibiting discrimination in education institutions and agencies and selected case examples provide a review of laws most relevant to education institutions and agencies, it also facilitates the identification of discriminatory practices or situations along with the federal laws that apply. (JMF)

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IDENTIFYING DISCRIMINATION

A Review of Federal Antidiscrimination Laws and Selected Case Examples

U.S. Department of Health, Education, and Welfare

Office of Education

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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IDENTIFYING DISCRIMINATION

A Review of Federal Antidiscrimination Laws and Selected Case Examples

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DISCRIMINATION PROHIBITED – No person in the United States, shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or be so treated on the basis of sex under most education programs or activities receiving Federal assistance.

IDENTIFYING DISCRIMINATION

A Review of Federal Antidiscrimination Laws and Selected Case Examples

An understanding of Federal and State laws prohibiting discrimination, and their implications for education policies and practices, has become a necessity for policy makers, administrators, and education personnel serving the nation's elementary, secondary and postsecondary institutions. In the years since the 1954 Supreme Court decision regarding *Brown v. The Board of Education,* Federal and State legislation and case law have delineated the diverse forms of discrimination which exist in education institutions and agencies and defined the rights of students and employees to consideration and treatment without regard to race, color, national origin, English language proficiency, or sex. These concerns must be incorporated into the programs, policies and practices of education agencies and institutions.

Many forms of discrimination result from the perpetuation of traditional practices and policies which have not been carefully examined to determine the impact of their application. These unrecognized forms of discrimination require systematic efforts for their identification and elimination. The first step for reducing such discrimination is to ensure one's ability to recognize possible discriminatory policies and practices, and the laws, regulations and guidelines which may apply.

The following materials provide an opportunity to review the Federal antidiscrimination laws most relevant to education institutions and agencies, and to test one's skills in the identification of discriminatory practices and situations and the Federal laws which apply to each. Federal regulations which provide further clarification of these antidiscrimination laws are listed in an appendix at the end of this document.

SUMMARY OF FEDERAL LAWS AND REGULATIONS PROHIBITING DISCRIMINATION IN EDUCATION INSTITUTIONS AND AGENCIES

Five Federal antidiscrimination laws and a Federal executive order comprise the major antidiscrimination requirements which are relevant to education institutions and agencies. These include:

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act prohibits discrimination against students on the grounds of race, color, or national origin in programs receiving Federal funds. Title VI and related case law prohibit discrimination on the basis of race in student admissions, access to courses and programs, and student policies and their application. They also require the provision of bilingual instruction or some other method of compensating for students of limited English speaking ability. Any institution or agency receiving Federal funds is covered by Title VI. Most education activities of a recipient agency or institution are covered, even some activities or programs not in direct receipt of Federal funds.

Procedures for the filing of possible complaints are provided under the legislation. Such complaints should be filed with:

- The Office for Civil Rights
  U.S. Department of Health, Education, and Welfare
  Washington, D.C. 20201
  or
- a regional Office for Civil Rights
  U.S. Department of HEW

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972

Title VII of the Civil Rights Act prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. All institutions or agencies with fifteen or more employees –including State and local governments and labor organizations–are covered under the amended Act. Title VII prohibits discriminatory practices in all terms and conditions of employment, including:

- recruitment, selection, assignment, transfer, layoff, discharge, and recall
- opportunities for promotion
- in-service training or development opportunities
- wages and salaries
- sick leave time and pay
- vacation time and pay
- overtime work and pay
- medical, hospital, life and accident insurance
- retirement plans and benefits
- other staff benefits

Complaints of employment practices which discriminate in violation of Title VII should be made to:

- The Equal Employment Opportunity Commission
  2401 E Street, N.W.
  Washington, D.C. 20037
  or
- a regional office of the EEOC

In instances where State or local fair employment practices laws provide procedures for the handling of complaints of discrimination, the complaint may be referred to the agency for a sixty-day period of time. If the complaint is not resolved at this level, the EEOC assumes responsibility for investigation and conciliation. If this fails, the EEOC, the U.S. Attorney General, or the complainant may file suit.

The Equal Pay Act of 1963 as amended by the Education Amendments of 1972

The Equal Pay Act prohibits sex discrimination in salaries and most fringe benefits. All employees of education institutions and agencies, including those in professional, executive, and administrative positions, are covered by the Equal Pay Act.

The Act provides that a man and a woman working for the same employer under similar conditions in jobs requiring substantially equivalent skills, effort and responsibility must be paid equally even when job titles and assignments are not identical.

Employers are required to maintain specified records relevant to the determination of possible violations of the law. Complaints may be filed with:

- Employment Standards Administration
  Wage and Hour Division
  U.S. Department of Labor
  Washington, D.C. 20210
  or
- a regional office of the U.S. Department of Labor

Title IX of the 1972 Education Amendments

Title IX prohibits discrimination on the basis of sex against students and employees of education programs and activities receiving Federal funds. Nearly all elementary, secondary and post-secondary institutions are covered under this legislation. The Title IX Regulation prohibits sex discrimination in such areas as:

- admissions to vocational, graduate, professional and public undergraduate schools
- access to courses and programs
- counseling and guidance–tests, materials, and practices
- physical education and athletics
- vocational education programs
- student rules and policies
- financial assistance
- student housing
- extracurricular activities
- employment in education institutions

The Regulation covering Title IX requires education agencies and institutions to develop grievance procedures for the local handling of complaints of discrimination. This procedure may be used or complaints may be filed directly with:

- The Office for Civil Rights
  U.S. Department of Health, Education, and Welfare
  Washington, D.C. 20201
  or
- a regional Office for Civil Rights
  U.S. Department of HEW

Executive Order 11246 as amended by 11375

Executive Order 11246 prohibits employment discrimination on the basis of race, color, religion, national origin or sex in institutions or agencies with Federal contracts of over $10,000. Relevant contracts include both contracts for direct services and "grants" which involve a benefit to the Federal government. Institutions or agencies covered under the Executive Order must observe nondiscriminatory practices in hiring, discharge, promotion, wages, benefits, training, and all other conditions of employment.

Those institutions or agencies with Federal contracts of $50,000 or more and 50 or more employees are required to develop written affirmative action plans with numerical goals and timetables. Although the contract may involve only one unit within the institution, the affirmative action plan must cover all employees throughout the institution.

Enforcement of the Executive Order and related policy guidelines are the responsibility of the Office of Federal Contract Compliance (OFCC) of the U.S. Department of Labor. The OFCC has designated HEW as the agency responsible for enforcement of the Order as it affects education institutions and agencies. Complaint procedures are provided for the filing of charges of possible discrimination and noncompliance. Complaints should be filed with:

- The Office for Civil Rights
  U.S. Department of Health, Education, and Welfare
  Washington, D.C. 20201
  or
- a regional Office for Civil Rights
  U.S. Department of HEW

Title VII (Section 799A) and Title VIII (Section 845) of the Public Health Service Act as amended by the Comprehensive Health Manpower Training Act and the Nurse Training Amendments Act of 1971

Titles VII and VIII of the Public Health Service Act state that institutions receiving Federal funds for their health personnel training programs may not discriminate on the basis of sex in admissions or in employment practices relating to employees working directly with applicants or students. Every institution receiving or benefiting from a grant, loan guarantee, or interest subsidy to its health personnel training programs or receiving a contract under Titles VII or VIII is covered.

Institutions are required to maintain specified records to determine whether violations have occurred. Periodic reviews of programs receiving Federal funds may be made to determine compliance with the regulation covering Titles VII and VIII.

Procedures are provided for the filing of complaints of violations of Titles VII and VIII. Complaints should be filed with:

- The Office for Civil Rights
  U.S. Department of Health, Education, and Welfare
  Washington, D.C. 20201
  or
- a regional Office for Civil Rights
  U.S. Department of HEW

CASE EXAMPLES

Examples of discriminatory policies and practices in education institutions and agencies are provided below. Each case example has been adapted from an actual situation. One group of case examples is drawn from the experience of local education agencies; another group provides examples drawn from postsecondary institutions. It may be useful to read through each of the examples to determine the possible areas of discrimination and probable violations of Federal laws and regulations. A space is provided in which the Federal law(s) or order relating to each example may be noted. A brief analysis of each example and the pertinent law or laws follow the final case example.*

*Many of these case examples were drawn from information provided by the National Education Association.

Background Information

School District No. 41 is responsible for the elementary-secondary education of 7,200 students who attend eighteen elementary schools, six junior high schools, two high schools and two vocational schools. The student population includes 1,600 black students, 418 Spanish-speaking students, 23 Asian students, and 16 Native American students. The District employs 280 classroom teachers, counselors, and paraprofessional personnel. Eighty-two percent of the elementary school staff and 48 percent of the secondary school staff is female. There are four minority teachers and 12 minority paraprofessional staff members in the District.

The central administrative staff is headed by a team of six males, none of whom is a member of a racial or ethnic minority group. None of the principals in the District is minority or female, but two minority males have recently been promoted to assistant principal positions and one female has been included in an administrative internship program provided by the District. The District currently holds a Federal contract of $80,000 for the development of model vocational programs.

Example 1

Ms. Chin, a counselor in one of District 41's secondary schools, has been employed by the District for the past eight years. As a classroom teacher she compiled an outstanding performance record; she completed a master's degree in the field of counseling and has consistently received outstanding ratings for her job performance as a counselor. Recently she has completed a second master's degree, this one in the field of school administration, and obtained the State credential for an administrative position.

This year Ms. Chin applied for the position of assistant principal at East High School. A male guidance counselor and a male physical education teacher also applied for the position. Neither of the men had been employed by the District for more than three years and neither had completed the requirements for the administrative credential. The physical education teacher, a white male, was selected for the job. When Ms. Chin asked for an explanation of the reason for the decision, the personnel office refused to provide a written or oral explanation.

Relevant law(s):

Example 2

Mr. Jones, a black male, received his B.A. degree in special education from the State University last June. He completed his student teaching in District 41 and received an outstanding evaluation and recommendation. As a result of his interest in the community, he applied for the special education position in Elmwood Elementary School. A white male who had just completed a B.A. degree was hired for the position even though he had no prior teaching experience or credential in special education.

Relevant law(s):

Example 3

Two vocational high schools are operated by the District. Boys are currently admitted to Jefferson Vocational High and girls to Washington Vocational High. Jefferson provides courses in printing, computer science and electronics which are not provided to students at Washington Vocational High School. A number of female students indicated their desire to study in those

fields not provided at Washington Vocational High School. Under pressures, the District permitted a few girls to enroll in courses at Jefferson, but only when there was not a full enrollment of boys.

Relevant law(s):

Example 4

East High School provides a variety of academic and extracurricular activities for its 1,200 students. In the wake of a 1972 desegregation order, more than 500 black students from West High School, which had been attended primarily by black students, were reassigned to East High School. All black students are automatically assigned to one semester of remedial English and must demonstrate proficiency in English before they may enroll in other English courses. There is no equivalent requirement for non-black students.

Relevant law(s):

Example 5

Barbara, a tenth grade student, is pregnant. According to School District policy, she must be excluded from regular classes and extracurricular activities as soon as her condition is obvious to others. Although special classes for pregnant students are provided, Barbara does not wish to attend these classes.

Relevant law(s):

Example 6

Vocational education courses offered in District 41's non-vocational high schools provide training and work experience in accounting, typing, shorthand, typesetting, mechanical drawing, and clerical sales which enable students to move into business and industrial positions upon graduation from high school. A work-study program is included, and many students work part of the school day in positions similar to those which they plan to enter following high school. Although both girls and boys are participating in all of the classes, the District maintains separate referral lists for boys and girls because some of the participating employers have stated that they will not accept either boys or girls for particular types of jobs. The same separate lists are maintained for postgraduation referral purposes, and the District refers boys and girls according to the employer's preference.

Relevant law(s):

Example 7

Ms. Martin, an experienced social studies teacher with an outstanding record of performance, has recently moved to the area included in District 41. She is interested in obtaining a position teaching social studies at the junior high school or senior high school level. She obtained an interview with a member of the District personnel office and explained her interest in securing a position in the area of social studies. The interviewer reviewed her record and recommendations and commented on them favorably. The interviewer indicated, however, that he was sorry that it would not be possible to offer her a position in the area of social studies since the social studies position open required a teacher who could also serve as coach for boys' basketball.

Relevant law(s):

Example 8

Ms. Ramirez has taught for seven years at one of the elementary schools within School District 41. She is expecting a child in six months. The District policy requires that pregnant women must stop teaching at least five months prior to the expected birth date. It also denies pregnant teachers any pay during this period, including accumulated sick leave pay. Ms. Ramirez is currently supporting her husband's completion of medical school. All her efforts to convince the school administration that she is medically able to complete the school year have failed. Her physician has advised the District that she is medically able to continue, but without results.

Relevant law(s):

Example 9

Juanita is a junior at West High School. She is an excellent swimmer and would like to swim competitively. She spoke to the coach of the varsity swim team about her interest and mentioned that her most recent time in the 300-meter medley was better than the times of three team members in the meet the week before. The coach said that although her time sounded good, District policy would not permit her to try out for the team because it limits membership to boys only. West High School offers volleyball and softball teams for girls and football, basketball, hockey, swimming, tennis and baseball for boys.

Relevant law(s):

Example 10

Seventh-grade students in School District 41 have completed several vocational interest inventories to determine the general direction of their vocational interests. Each student is provided a report of results indicating how his/her scores compare with those of other students of the same sex who completed the test. The report provided to female students is based upon a listing of such occupations as secretary, clerk, teacher, nurse, dental technician and other sex-stereotyped occupations. Similarly, the report provided to male students rates their interests in such vocations as auto mechanics, law, medicine, engineering and other sex-stereotyped occupations.

Relevant law(s):

Postsecondary Education

Background

State University is responsible for the education of 18,000 students, 6,000 of which are enrolled in professional or graduate programs of study. The student population consists of approximately eight percent black students, two percent Hispanic students, one and one-half percent Asian students and one-half of one percent Native American students. Sixty percent of the students are male and forty percent are female. The majority of the minority students are concentrated in the fields of allied medical sciences, sociology, social work, and education.

The part-time and full-time faculty, administrators and counselors number nearly 2,000 persons; 800 of this group are in tenured positions, 600 are on career ladders leading to tenure, and 600 are non-career ladder part-time and full-time faculty and staff. Although nearly 20 percent of the total faculty and staff is female (400), only 16 women hold tenured positions. Six black males in the social work and education departments are tenured; while the remaining 45 minority group faculty are non-tenured. Two Hispanic males employed in the Latin American

studies department have taught in the University for five years and are non-tenured. The Medical School has no tenured female faculty and two Asian American males who are tenured. The Law School has one tenured black male professor and one white female tenured professor.

The University currently receives a total of $2 million in grants and contracts from the Federal government and receives funds under the Public Health Service Act.

Example 1

Ms. Terry and Mr. Greenberg have taught in the English department since September, 1973. Both have completed all course work for the doctoral degree and are in the process of completing their doctoral dissertations. Ms. Terry teaches three sections of Freshman Composition and one section of Renaissance Literature, while Mr. Greenberg teaches Medieval Literature, Shakespeare and one section of Freshman Composition. Ms. Terry was initially hired at a salary of $9,800 and has received increases of $200 each year. Mr. Greenberg was hired at a salary of $10,000 and has been given subsequent increases of $500 each year. Ms. Terry and Mr. Greenberg received comparable performance ratings from students and colleagues.

Relevant law(s):

Example 2

State University has a placement service for students at all levels—undergraduate students, graduating seniors and students of graduate schools. Although both men and women participate in all the divisions and schools of State University, the placement service maintains separate job listings for men and women and for members of racial-ethnic minority groups because some of the participating employers have stated that they will not accept referrals of students of a particular sex or ethnic group.

Mr. Brown, a black male, ten credits short of a degree in business, was not informed of summer openings in his field and was referred to several camp counseling jobs. Mr. Smith, a white classmate in the business department, obtained a summer position in an accounting firm on referral from the placement service.

Relevant law(s):

Example 3

Ms. Temple, a black female, will receive her B.A. degree in art history from State University next June. Despite an exemplary academic record, she was not informed of scholarship opportunities for overseas study. When the selection of students receiving scholarships for overseas study was announced by the University, the group consisted of four white males and two white females, all of whom had been notified of the opportunity by the chair of the art history department.

Relevant law(s):

Example 4

State University requires all unmarried female undergraduate students to live in university residence halls on campus. The space for such students is limited, so a cut-off of applications of female unmarried students is made when the residence halls have been filled. No similar cut-off for male admissions is necessary since unmarried males may live in off-campus housing.

Relevant law(s):

Example 5

When the Black Students Alliance was formed nine years ago, the University provided the 79-student organization a meeting room in the basement of an old classroom building. The Alliance now has a membership of 543. Eight months ago, an astrological organization was formed. The Students for Psychical Astrology, which has a registered membership of 131, were provided semi-permanent headquarters in four rooms of the newly-constructed student activities complex.

All of the other student groups, composed primarily of white students, have been provided similar semi-permanent headquarters. The Black Students Alliance, composed primarily of black students, has not yet been offered similar semi-permanent headquarters.

Relevant law(s):

Example 6

Comprehensive medical insurance is provided for faculty and students of State University. Gynecological care for female faculty and students is exempted from coverage under this insurance although no exemptions are made in the coverage of male faculty and students.

Relevant law(s):

Example 7

The competitive sports program for women at State University has tradionally been limited to participation in competitive basketball and volleyball. Although intercollegiate and intramural teams are provided for women in these sports, the program can serve only a limited number of interested female students. Further, these women's teams are not provided support equal to that provided for men's teams. Female students must provide their own uniforms, and pay their own expenses during travel to games.

Recently a new fieldhouse was completed. The new facilities include a pool which will be used by the men's varsity swimming team. The University Athletic Department has made plans to provide a women's swimming team which will use the old, non-regulation size pool that has been abandoned.

Relevant law(s):

Example 8

Ms. Valdez has completed three years of teaching in the School of Education. After two and one-half years, she applied and was considered for tenure. She received notification that tenure was denied because she had recently married Mr. Cruz who already held a tenured position within the University. It is a regular practice of faculty committees within the University to deny tenure to female faculty on grounds of nepotism, although no such denial is required by University personnel policies.

Relevant law(s):

Example 9

Some three years ago, Mr. LaBelle, a black male, was approached about accepting the position of affirmative action officer for the University. It was suggested that if he performed well in this job, it would increase his chances of obtaining a central administrative position in the University. Mr. LaBelle accepted the offer; he has worked hard in his position as affirmative action officer and has received commendations for his performance.

During the past year Mr. LaBelle has applied for other central administrative jobs when openings were available. Each time he has been interviewed and told that his fine qualifications have been recognized, but that it is not possible to promote him to another job right now since the affirmative action position requires a minority staff person to give it credibility.

Relevant law(s):

Example 10

Dr. Como, a faculty member in the School of Allied Health Professions, has an M.D. degree and several years of teaching experience working directly with students enrolled in dental technician programs. Although she has worked as a colleague with Dr. Epstein since he joined the faculty two years after her arrival, she finds that she is being paid $4,000 less salary despite the fact that they occupy equivalent positions. It is also clear that Dr. Epstein has been encouraged to develop proposals for the funding of additional projects, while she has struggled for a year to gain approval of the School to apply for outside funding.

Relevant law(s):

ANALYSIS OF CASE EXAMPLES

Local Education Agency Examples

Example 1

Title VII of the Civil Rights Act, Title IX of the 1972 Education Amendments, and Executive Order 11246:

Although additional data would be needed to ascertain that Ms. Chin's nonpromotion to an administrative position was discriminatory, the evidence provided would suggest a general pattern of nonpromotion of women and a specific lack of consideration of Ms. Chin's credentials. Discrimination through nonpromotion of qualified women to administrative positions is prohibited by Title VII of the Civil Rights Act and Title IX of the 1972 Education Amendments. Because the District receives more than $10,000 in federal contracts, such discrimination would also be prohibited under Executive Order 11246.

Example 2

Titles VI and VII of the Civil Rights Act and Executive Order 11246:

Title VII states that selection and hiring of employees must be carried out without discrimination on the basis of race, color, religion, national origin, or sex. In this instance, the fact that a black male with relevant qualifications for the position was rejected in favor of a white male without the special education credential would suggest the possibility of discriminatory practices. Title VI would also apply to the extent that employment discrimination affects the beneficiaries of the program.

Example 3

Title IX of the 1972 Education Amendments:

The Title IX Regulation prohibits the provision of differential programs on the basis of sex. According to the Regulation, vocational schools operated by local education agencies may not be segregated on the basis of sex.

Example 4

Title VI of the Civil Rights Act:

The assignment of students to courses or the imposition of testing or evaluation requirements upon students on the basis of their race is discriminatory and in violation of Title VI. Black students may not be required to enroll in courses or to meet performance requirements if such enrollment or performance is not required of other students.

Example 5

Title IX of the 1972 Education Amendments:

No student may be compelled to attend a special program on the basis of pregnancy or related conditions. Furthermore, a pregnant student must be permitted to continue in her regular classes and activities unless there are medical contraindications of such participation. Certification of medical capability for continued participation in regular classes and activities may be required of pregnant students only when it is also required of students for other forms of temporary disability.

Example 6

Title IX of the 1972 Education Amendments and Title VII of the Civil Rights Act:

Although schools may provide referral services for employers, they are prohibited from maintaining sex-segregated referral lists. Maintenance of such lists for work-study purposes would be in violation of Title IX; maintenance of such lists for postgraduation referral would be a violation of Title IX and of Title VII of the Civil Rights Act.

Example 7

Title IX of the 1972 Education Amendments, Title VII of the Civil Rights Act, and Executive Order 11246:

The linking of job qualifications that would result in a disparate impact on the employment opportunities of members of one sex is prohibited by Title IX and by Title VII. Capability to provide social studies instruction must be the relevant qualification to be examined when hiring for a social studies position. Qualifications, requirements or criteria used for employee selection may not place a disparate burden on one sex unless such qualifications or criteria have been demonstrated to be valid predictors of success in the particular job under consideration and alternative criteria are not available.

Example 8

Title IX of the 1972 Education Amendments, Title VII of the Civil Rights Act, and Executive Order 11246:

The Title IX Regulation states that pregnant employees may not be forced to leave their positions at an arbitrary date established by administrative policy. The determination of the time at which a pregnant woman may be unable to continue professional duties must be made on the basis of medical consultation between a woman and her physician. Sick leave pay may not be denied for medical conditions related to pregnancy if it is provided for other forms of temporary disability. Similarly, Title IX and related case law require that pregnancy and medically-related conditions be treated as other forms of temporary disability.

Example 9

Title IX of the 1972 Education Amendments:

According to the Title IX Regulation, when overall competitive sports opportunities have been denied or limited for members of one sex, members of that sex must be permitted to try out for teams provided only on a segregated basis for members of the other sex when such teams do not involve contact sports. Thus, a female must be permitted to try out and be admitted to the male swim team if she can meet the objective standards established for participation and team membership.

Example 10

Title IX of the 1972 Education Amendments:

Sex discrimination in the use of counseling instruments and the provision of counseling services is prohibited by the Title IX Regulation. Provision of test results based on sex-differentiated norms is permitted only if boys and girls are provided with reports of their scores according to both sets of norms. Schools may not use tests or other materials for evaluating or counseling students which cover different occupational or interest areas unless their use is shown to be essential to the elimination of sex bias. Care must also be taken to ensure that students understand the meaning of such tests and are provided opportunities for clarification. Institutions using sex-differentiated instruments must be able to demonstrate that alternative instruments which do not so differentiate are unavailable and that the instruments are used in a non-discriminatory fashion.

Postsecondary Education Examples

Example 1

Title IX of the 1972 Education Amendments, Title VII of the Civil Rights Act, Executive Order 11246, and the Equal Pay Act:

Male and female instructors carrying out equivalent job responsibilities must be paid comparably. Sex differentiation in pay (either in initial pay level and/or periodic increases) without evidence of substantial differences in the job functions or assignments is discriminatory.

Example 2

Titles VI and VII of the Civil Rights Act, Title IX of the 1972 Education Amendments, and Executive Order 11246:

Maintenance of job referral lists on the basis of race or sex is clearly in violation of Titles VI, VII and IX. The University is also subject to Executive Order 11246 by virtue of its Federal contracts and grants.

Example 3

Title VI of the Civil Rights Act:

Practices that provide differential treatment of students on the basis of race are prohibited by Title VI. Discrimination on the basis of race in the notification of students regarding financial assistance opportunities would be prohibited.

Example 4

Title IX of the 1972 Education Amendments:

Differential housing requirements for female and male students violate Title IX requirements for nondiscrimination in the treatment of students. Use of such policies as a means of limiting the admissions of females would also be in violation of Title IX Regulation requirements for nondiscrimination in admissions to public undergraduate institutions.

Example 5

Title VI of the Civil Rights Act:

Title VI prohibitions of race discrimination apply to most activities of a recipient education institution. Differential treatment of black students with regard to access to school facilities would be clearly discriminatory.

Example 6

Title IX of the 1972 Education Amendments, Title VII of the Civil Rights Act, and Executive Order 11246:

Differential provision of medical insurance and health services for male and female students and employees is prohibited by Title IX. Differential health services and benefits for female faculty members is also in violation of Title VII of the Civil Rights Act and Executive Order 11246.

Example 7

Title IX of the 1972 Education Amendments:

The Regulation implementing Title IX requires that education institutions effectively accommodate the interests and abilities of students of both sexes in club, intramural, interscholastic and intercollegiate athletics. In providing this opportunity, institutions must ensure that male and female athletes are not treated differentially with regard to such variables as:

- provision of equipment and supplies
- scheduling of games and practice times
- provision of travel and per diem allowances
- coaching and academic tutoring
- locker room, practice and competitive facilities

and several others. The case example indicates that the University does not adequately meet the interests of females in its athletic programs and does not provide support for the females who do participate in athletics which is equal to that provided for male athletes. Such practices are prohibited by Title IX.

Example 8

Title IX of the 1972 Education Amendments, Title VII of the Civil Rights Act and Executive Order 11246:

Although the Title IX Regulation does not prohibit nepotism rules, they are prohibited when applied in a manner which results in a disparate impact on one sex. In this situation, the

lack of policy specification would contribute to the potentially selective use of a nepotism prohibition as a practice to deny tenure to females on the basis of personal preferences or biases.

Example 9

Title VII of the Civil Rights Act and Executive Order 11246:

The assignment of an employee to a position on the basis of race would be a violation of equal opportunity principles. An applicant or employee is legally entitled to consideration for positions on the basis of his/her qualifications for those positions and without regard to his/her race.

Example 10

Title IX of the 1972 Education Amendments, Title VII of the Civil Rights Act, Executive Order 11246, Titles VII and VIII of the Public Health Services Act, and the Equal Pay Act:

The differential payment of male and female employees carrying out equivalent jobs is discriminatory. It is prohibited by the laws and the order listed above.

APPENDIX:
IMPLEMENTING REGULATIONS AND GUIDELINES

Title VI of the Civil Rights Act of 1964

Nondiscrimination in Federally-Assisted Programs–Regulation under Title VI of the Civil Rights Act of 1964, as amended through July 5, 1973.

(This may be obtained from the Office for Civil Rights, Department of HEW, Washington, D.C. 20201, or regional HEW offices.)

Title VII of the Civil Rights Act of 1964

Guidelines on Discrimination Because of Sex (April, 1972).

Guidelines on Discrimination Because of National Origin (January, 1970).

Guidelines on Employee Selection Procedures (August, 1970).

Laws and Rules You Should Know (1975).

(These and other materials are available from the Publications Unit, Equal Employment Opportunity Commission, 2401 E St., N.W., Washington, D.C. 20037 or EEOC district offices.)

Title IX of the Education Amendments of 1972 (Higher Education Act)

Final Title IX Regulation Implementing Education Amendments of 1972 (July, 1975).

(This may be obtained from the Office for Civil Rights, Department of HEW, Washington, D.C. 20201.)

Title VII (Section 799 A) and Title VII (Section 845) of the Public Health Service Act as amended by the Comprehensive Health Manpower Act and The Nurse Training Amendments Act of 1971

Sex Discrimination in Health-Related Training Programs (July, 1975).

(This may be obtained from the Office for Civil Rights, Department of HEW, Washington, D.C. 20201.)

The Equal Pay Act of 1963 as amended by the Education Amendments Act of 1972

Equal Pay for Equal Work–Interpretative Bulletin 800 (August, 1971).

Extension of the Equal Pay Act of 1963–Fact Sheet (September, 1972).

(More information may be obtained from the Wage and Hour Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, or field, area or regional Wage and Hour Division offices.)

Executive Order 11246 as amended by 11375

Sex Discrimination Guidelines (June, 1970).

Revised Order No. 4 (December, 1971).

Obligations of Contractors and Subcontractors (May, 1968).

HEW Higher Education Guidelines, Executive Order 11246 (October, 1972).

(These may be obtained from the Office for Civil Rights, Department of HEW, Washington, D.C. 20201 or the Office of Federal Contract Compliance, Department of Labor, Washington, D.C. 20210, or regional HEW or DOL offices.)